

COMMITTEE ON FINANCE
(Standing Committee of Berkeley County Council)

Chairman: Mr. Jack H. Schurlknight, Council Member District No. 6

A **meeting** of the **Committee on Finance**, Standing Committee of Berkeley County Council, was held on Monday, **July 25, 2011**, in the Assembly Room of the Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina, at 7:36 p.m.

PRESENT: Chairman Jack H. Schurlknight, Council District No. 6; Committee Member Robert O. Call, Jr., Council District No. 3; Committee Member Cathy S. Davis, Council District No. 4; Committee Member Caldwell Pinckney, Jr., Council District No. 7; Committee Member Steve C. Davis, Council District No. 8; ex-officios Mr. Daniel W. Davis, County Supervisor, Mr. Phillip Farley, Council District No. 1, Mr. Timothy J. Callanan, Council District No. 2, and Mr. Dennis Fish, Council District No. 5; Ms. Nicole Scott Ewing, County Attorney; Ms. Elizabeth Cannon, Assistant County Attorney; and Ms. Catherine Windham, Interim Clerk of County Council.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

Chairman Schurlknight called the meeting to order.

APPROVAL OF MINUTES

Chairman Schurlknight: "First on the agenda is the approval of minutes from May 25, 2011 and June 27, 2011.

It was moved by Committee Member Call and seconded by Committee Member Steve Davis to **approve** the minutes as presented. The motion passed by unanimous voice vote of the Committee.

EXECUTIVE SESSION – none

A. Consideration prior to **First Reading** of an **ordinance** providing for the allocation of revenues generated by the **Berkeley/Williamsburg Joint Industrial and Business Park**; repealing Ordinance No. 96-01-02, as amended in its entirety; repealing any resolutions pertaining to the allocation of revenues generated by the Joint Industrial and Business Park in their entirety; and other matters related thereto.

Supervisor Daniel Davis: "Mr. Chairman?"

Chairman Schurlknight: "Mr. Supervisor."

Supervisor Daniel Davis: "Mr. Chairman, in continuing our research today, we discovered that we actually had First Reading and introduction of this ordinance back in October, and it was passed unanimously, so we don't need to deal with that tonight. And, when we perfect the numbers in the ordinance, we'll have it back up for Second Reading and action by Finance."

Chairman Schurlknight: "Good; ok; thank you."

Mr. Fish: "Mr. Chairman?"

Chairman Schurlknight: "Mr...."

Mr. Fish: "When we get that, will we get the numbers with that?"

Supervisor Daniel Davis: "Yes; yes, Sir. We expect we'll have some information here very shortly that will allow us to perfect the numbers."

Mr. Fish: "Ok; thank you."

Chairman Schurlknight: "Thank you."

B. Review prior to Second Reading of Bill No. 11-26, an ordinance authorizing, pursuant to Chapter 44 of Title 12, South Carolina Code of Laws, 1976, as amended, the execution and delivery of a fee agreement between Berkeley County, South Carolina, and Pegasus Steel, LLC, Dynamic Solutions, LLC, and Alton Property Management Group, LLC; and matters relating thereto.

It was moved by Committee Member Pinckney and seconded by Committee Member Call to **approve** review, prior to Second Reading, of Bill No. 11-26.

Chairman Schurlknight: "We have a motion and a second, is there any discussion?"

Committee Member Steve Davis: "Yeah; could I have a little refresher course for me, please, some information?"

Chairman Schurlknight: "Yeah; Gene; thank you."

Mr. Gene Butler, Economic Development Director: "This bill pertains to Pegasus Steel purchasing the former Brackett and Cochran facility, and it's converting it over to a new entity, and it's going by the name of Dynamic Solutions. They'll be expanding the property, as well as adding some additional jobs."

Committee Member Pinckney: "Mr. Chairman?"

Chairman Schurlknight: "Mr. Pinckney."

Committee Member Pinckney: "When you say additional jobs, what does the number look like?"

Mr. Butler: "It will be a small number to begin with, probably, five to ten initially, but it has the potential of growing."

Committee Member Pinckney: "Ok."

Mr. Farley: "That's high-tech machinery too."

Mr. Butler: "It is; yes."

Committee Member Steve Davis: "They'll be adopting the fee-in-lieu from..."

Mr. Butler: "Transfer, yes, Sir."

Committee Member Steve Davis: "Ok."

Chairman Schurlknight: "Any other discussion?"

There was no further discussion.

The motion passed by unanimous voice vote of the Committee.

C. Review prior to Third Reading of Bill No. 11-23, an ordinance authorizing the execution and delivery of one or more incentive agreements by and among Berkeley County, South Carolina, and **Project Surge (has been corrected to read Tonmik Import/Export Solutions, Inc., versus Project Surge)**, and one or more affiliated or related entities as sponsor to provide for a **fee-in-lieu of tax** incentive; to provide for a sponsor affiliate; to provide for the inclusion of the project in a multi-county business or industrial park; to provide for special source revenue credits; and to enter into any other necessary agreements with the sponsor and sponsor affiliate to effect the intent of this ordinance; and other related matters.

It was moved by Committee Member Pinckney and seconded by Committee Member Steve Davis to approve **review**, prior to Third Reading, of Bill No. 11-23.

Chairman Schurlknight: "Is there any discussion?"

Ms. Ewing: "Mr. Chairman?"

Mr. Fish: "Hasn't that thing changed?"

Chairman Schurlknight: "Yes."

Ms. Ewing: "Just for the record, there was a correction that was sent out to the agenda, and the industry is actually **Tonmik Import/Export Solutions, Inc.**"

Chairman Schurlknight: "Yes; exactly."

Ms. Ewing: "Just so we've got that for the record."

Chairman Schurlknight: "Yes; that is exactly right. Thank you for that. Any other discussion?"

Mr. Callanan: "Yes, Mr. Chairman?"

Chairman Schurlknight: "Mr. Callanan."

Mr. Callanan: "This is a multi-county park, right?"

Chairman Schurlknight: "Yes."

Mr. Callanan: "Was this the one I had asked about a little while back about – this is a new agreement, not a – or is this a transfer, an old agreement?"

Ms. Ewing: "This is an entirely new agreement."

Mr. Callanan: "Ok; and so, as a multi-county park, we will be allocating the funds like we traditionally do, correct?"

Chairman Schurlknight: "Yes; are you referring to, like the school district?"

Mr. Callanan: "Yeah."

Chairman Schurlknight: "Yeah; it would fall along with the rest of them."

Mr. Callanan: "Thank you."

Mr. Farley: "Not like Mt. Holly."

Ms. Ewing: "I do not believe it's in Mt. Holly if that is the question."

Chairman Schurlknight: "No, it's not. Any other discussion?"

The motion passed by unanimous voice vote of the Committee.

D. Consideration of a resolution amending Section IV of Part Six of the Berkeley County Personnel Manual relating to retirement and retiree benefits.

Committee Member Steve Davis: “Can we have some insight into that resolution, please?”

Mr. Farley: “Mr. Chairman, the committee met this afternoon, and Nita will be giving everyone a follow-up of the GASBY that we had – that we concluded our workshop.”

Committee Member Pinckney: “GASBY 45.”

Ms. Leonitta Turner, Human Resource Director: “Actually, I distributed that prior to the meetings, so everyone should have the new retirement policy. And, one of the reasons why we’re putting the policy in place is because some of our GASBY liability. And, what we are trying to do to help our GASBY liability is starting with our new employees, then our health care benefits will no longer be eligible to them except based upon contract or by law, but any employee that has worked with us previously, then they will continue to have the same benefits that they are considering now, unless County Council, in the future, makes a change.”

Chairman Schurlknight: “Ok; thank you.”

Supervisor Daniel Davis: “And Nita, let’s make sure everybody understands that these are post employment medical benefits, not regular health insurance benefits while they are employees.”

Ms. Turner: “That’s correct.”

Mr. Farley: “But also, we changed it from 2005 to 2011. So, starting September 30th, anyone hired after that date will fall under this category.”

Ms. Turner: “So, anyone that’s a current employee with Berkeley County, their benefits will remain the same.”

Mr. Farley: “That’s right.”

Ms. Turner: “Anyone who joins Berkeley County as of October 1st, their benefits will be different.”

Committee Member Steve Davis: “Ok.”

Mr. Callanan: “Mr. Chairman?”

Chairman Schurlknight: “Mr. Callanan.”

Mr. Callanan: “And just to refresh my memory, what is that time period that they have to be here, in order to – that doesn’t change, does it?”

Ms. Turner: “The time period will still be 10 years.”

Mr. Callanan: “Will still be 10 years, but the new folks would be – they wouldn’t get benefits, post-employment?”

Ms. Turner: “That is correct.”

Mr. Callanan: “Alright; retirement.”

Committee Member Steve Davis: “Well, they will...”

Ms. Turner: “Specifically, as far as what the County pays is \$175.00 a month toward medical insurance, and that’s what we pay – medical, dental or vision. So, that is what they would not be eligible for.”

Committee Member Steve Davis: “That would cease.”

Ms. Turner: “That would cease.”

Chairman Schurlknight: “Any other comments?”

It was moved by Committee Member Steve Davis and seconded by Committee Member Call to **approve** consideration of a resolution amending Section IV of Part Six of the Berkeley County Personnel Manual relating to retirement and retiree benefits. The motion passed by unanimous voice vote of the Committee.

Chairman Schurlknight: “Thank you, Nita. And, Phillip, thank you for chairing that committee for us too.”

Mr. Farley: “Thank you.”

E. Mrs. Cathy S. Davis, Council District No. 4, re: Transparency Committee Report

Committee Member Cathy Davis: “Yes, Mr. Chairman, the Transparency Committee met on July 15th. We had a demonstration from Home Telephone on some cameras, and a motion was made and I’d like to make a motion tonight to approve the purchase of the two-pan, tilt, zoom cameras, and other necessary operating pieces and a recording mechanism, which will be determined at a later date, as recommended from Home Telephone, and this amount is not to exceed \$5,672.00, with the funds coming from Contingency.”

Committee Member Steve Davis: “Mr. Chairman?”

Chairman Schurlknight: "Mr. Davis."

Committee Member Steve Davis: "Is this gonna be a one-time cost outlay?"

Committee Member Cathy Davis: "Yes."

Committee Member Steve Davis: "Ok. I move for approval."

Chairman Schurlknight: "We have a motion. Can I get a second on that?"

Committee Member Cathy Davis: "We just needed a second."

Chairman Schurlknight: "Discussion?"

Committee Member Cathy Davis: "Did we get a second?"

Mr. Callanan: "Mr. Chairman?"

Chairman Schurlknight: "Yes."

Committee Member Steve Davis: "It got a second, yes."

Mr. Callanan: "What's the – what would be the time frame on this?"

Committee Member Cathy Davis: "Can I ask Chip to come forward? If I understand right, they said within a few months?"

Mr. Chip Boling, IT Director: "Once Council approves it, they can install it within two – three weeks after PO's (purchase orders) are cut and everything. It's not hard for them to get it up and get it installed. And then, of course, we gotta make sure it's operating, so we're probably looking at a month after Council approves it."

Mr. Callanan: "And, Home Telecom has agreed to re-broadcast."

Mr. Boling: "That's correct."

Mr. Callanan: "Has any other franchise agreed to this?"

Mr. Boling: "No, Sir."

Committee Member Cathy Davis: "Make it available to other franchises."

Mr. Boling: "Any other broadcasting group is allowed to use it. Home Telephone will make it available to them."

Mr. Callanan: "Ok; and plus, who does the labor of encoding? Is it us or Home?"

Mr. Boling: "The recording will actually – that will be determined with the mechanism that we choose here, but it should be recorded on the recorder we have here, and then it will be downloaded, then..."

Mr. Callanan: "So, it won't require any post-production what-so-ever. It's just raw right out of there."

Mr. Boling: "It's raw data. It's, basically, whatever takes place will be recorded, not edited, and then reproduced."

Committee Member Steve Davis: "Mr. Chairman, will there be any make-up artists available?"

[Laughter]

Mr. Boling: "I don't think y'all need it."

Chairman Schurlknight: "Chip, let me ask you this? How is it going to be available for the citizens to view it?"

Mr. Boling: "Ok; Home Telephone has agreed already to two – three time slots within, and they'll be determining what that's going to be on their cable channel, cable network channel, and that will be provided at no cost to the County."

Chairman Schurlknight: "Ok, then; that will be great. Now, I did hear a little talk about putting it on YouTube. Have y'all..."

Mr. Boling: "Yes, Sir."

Chairman Schurlknight: "...talked anything about YouTube?"

Mr. Boling: "Home Telephone has their own YouTube channel that's dedicated to them, and they have also volunteered, if Council so choose, to have the Council Meetings posted to their YouTube channel, and then folks could log on to it and view any meetings at their leisure."

Chairman Schurlknight: "Let me ask you this. When you're talking about Home on the YouTube site, is that a secured site to where somebody can't go over there and download, say this video of our Council Meeting? Can they go in there and download it and make a file of that?"

Mr. Boling: "The way I understand the way Home Telephone's YouTube site is set up, folks will click on the downlink. Basically, it would stream back to them, and as soon as they were finished and terminate it, then it would terminate at that point in time."

The question that you're asking is could they capture that video. The answer is yes, they could capture it if they so choose. They couldn't send it back. So, in other words, they couldn't edit it and send it back to that site. So, it is secure from that perspective."

Chairman Schurlknight: "But, they can edit it and put it back on the web, on YouTube, correct?"

Mr. Boling: "I would assume that they could do that, sure."

Chairman Schurlknight: "Yes, most definitely."

Mr. Boling: "They could do that with anything, in essence, they could even take a TV program, tape it and then edit it and stick it back out there – cuts or blips."

Chairman Schurlknight: "My concern is somebody taking it and downloading it, re-editing it or editing it and then posting it back on the website. There's a lot of technology out there, and there's a lot of misinformation out there. There's a lot of alias' out there."

Mr. Boling: "Right."

Chairman Schurlknight: "Believe me, I've been dealing with it for two years. My opinion would be that this video would be located on our County website, secured to where somebody can view it, but they couldn't download it. Now, bandwidth, I know, that might be a problem, but I'm not for just putting something out there. Somebody could take it, edit it, and throw it back on and say it's the gospel when it's not."

Mr. Boling: "I'm not sure that if they can view it, there may be a mechanism for them to capture it is what I'm saying."

Chairman Schurlknight: "Right."

Mr. Callanan: "Mr..."

Chairman Schurlknight: "If they can capture it, they can edit it."

Mr. Boling: "Correct."

Chairman Schurlknight: "And if they can do that, then they can put it back on YouTube."

Mr. Boling: "I guess, what I'm getting at is I don't know that there's a mechanism that we have in place that would inhibit that."

Chairman Schurlknight: "Right."

Mr. Boling: "No matter what site it's on."

Committee Member Steve Davis: "I don't think you can, Jack."

Committee Member Call: "Mr. Chairman?"

Mr. Callanan: "Mr. Chairman?"

Chairman Schurlknight: "Yes, Mr. Callanan."

Mr. Callanan: "YouTube does not allow you to download the videos. They just use a constant stream, but what you're saying is that someone can get a third-party program that, basically, takes a screen capture of you watching the video..."

Mr. Boling: "Correct."

Mr. Callanan: "...and then, at that point, you can then, you know, re-broadcast it. So, any screen you can watch it on can be screen-captured. So, regardless of where you have the video, whether it was being streamed from our servers or from YouTube's, just by the virtue of you being able to watch it, it can be screen-captured, and so, that's the issue. YouTube does not allow you to actually download the video in itself."

Mr. Boling: "That's correct. It's just streamed."

Mr. Callanan: "So, I think it's the same, whether it was on our site or YouTube's site, it's the same security. It's the same problem that you're dealing with, which is, you know, anyone can. I mean, just like if you're watching a TV program or movie, someone can be there with a video camera and filming it. There's no way you can stop what people can see."

Chairman Schurlknight: "Like I said, I do have some concerns with that one."

Mr. Boling: "Yes, Sir."

Chairman Schurlknight: "When that can be re-edited and put back out there."

Mr. Boling: "And again, they just provided that as an option."

Chairman Schurlknight: "Right."

Mr. Boling: "And, that's up to Council."

Chairman Schurlknight: "Ok. In fact, this motion and second that I have now is for the purchase of the cameras, and I thought I'd just bring that discussion up. Any other discussion on this? We have a motion and a second for \$5,672.00 for the purchase of the cameras. Is that correct?"

Committee Member Cathy Davis: "That includes installation."

Committee Member Steve Davis: "I call for the vote."

Chairman Schurlknight: "Yeah."

The motion passed by unanimous voice vote of the Committee.

Chairman Schurlknight: "Thank you, and Mrs. Davis, thank you for chairing this committee for us. You've done a real good job with that."

F. Discussion of Property Acquisition for the Hanahan Library

Committee Member Steve Davis: "I move that we authorize the County Supervisor to entertain negotiations to, hopefully, acquire that site for the new Library up in Hanahan."

Committee Member Pinckney: "Second."

Chairman Schurlknight: "We have a motion and a second. Any discussion?"

The motion passed by unanimous voice vote of the Committee.

Chairman Schurlknight: "We have one other issue that we want to go over before we adjourn. Without objection, I've asked David Jennings, the Attorney for Berkeley County Water and Sanitation to be with us tonight and talk about the relationship with the County and Berkeley County Water and Sanitation. Last month, there was some questions about the legalities of the transfer of funds from Berkeley County Water and Sanitation to the County, and David, I will leave it to you."

Mr. Jennings: "Mr. Chairman, thank you."

Chairman Schurlknight: "Thank you."

Mr. Jennings: "Not much has happened at what used to be known as the Berkeley County Water and Sanitation Authority or Water and Sewer Authority, now known as Berkeley County Water and Sanitation, before I arrived. But, the operative documents that I'm going to discuss with you did occur before my arrival, and what I'm telling you is based on documents that I accumulated the past 25 or 30 years ago. The operative date, the first operative important date in the issue of the legislative establishment of the Berkeley County Water and Sanitation Authority is March 7, 1973. That was the effective date rule amendment to the state constitution. In essence, the Home Rule amendment says that the General Assembly should keep out of local affairs. It should not pass legislation affecting a single county or a single part of the state. As all of you know, the General Assembly has pretty well ignored that for 40 years, but it's still part of the

state constitution. So, that's March 7, 1973. On March 23, 16 days later, the General Assembly adopted Act No. 578, which creates the Berkeley County Water and Sewer Authority. On July 10, 1975, the County's Supervisor who, at that time, was Clyde Umphlett – County Council was not in existence. We had a County Supervisor who was assisted by a Board of Commissioners, I think, was the term. So, on July 10, 1975, Mr. Umphlett adopts a resolution that purports to do both things; first, establishes water and sewer as an agency of the County or a department of the County, but also seems to give Water and Sanitation, or Water and Sewer, some authority of their own. It was just an aberration, which has been repealed, and I'll get to that in just a minute. November 2, 1976, was the election in Berkeley County authorizing the County to go into the water and sewer business, so water and sewer was purportedly set up by the General Assembly, and then re-setup by the Supervisor before the County actually had the authority to go into the business. November 2, 1976, the election was held and the voting public in Berkeley County authorized the County to go into the water and sewer business. April 26, 1978, there is an ordinance of operation for the Berkeley County Water and Sanitation Authority. This was an ordinance adopted by the members of the Authority, using language from the 1973 statute, talking about enacting ordinances and their actually running the Water and Sewer Authority. On December 28, 1978, Mr. Umphlett put an end to that. He adopted an ordinance establishing an agency of Berkeley County to be designated as the Berkeley County Water and Sewer Authority. In addition, that ordinance ratified and adopted every action taken by the purported Authority Board, so that, my recollection is, they had adopted a sewer use ordinance. Mr. Umphlett legitimized everything that they had done. He also created the Advisory Committee, which functioned for another 17 or 18 years. In August 17, 1979, the Supervisor expanded the membership of the Advisory Authority to eight members so that each member of County Council, the County Council that was coming into existence, would be able to appoint one member to the Advisory Authority. And, the final date that I thought was significant for you was November 27, 1995, County Council eliminated the Advisory Authority. So, those are the critical dates since 19 – at the very least, since 1978, which I think was about the time that Mr. Bryngelson was hired as the first director. The then Authority, now Berkeley County Water and Sanitation, as operated as an agency, a department of the County, just as all of your other departments are departments of the County. In the 1975 resolution adopted by Mr. Umphlett, he specifically mentions the question of the constitutionality of the 1973 Act of the General Assembly. My recollection is that during that time, Senator Dennis' firm represented the County, and for a period of time, John Tiencken was employed by Senator Dennis and was doing the County's work, and then John came over and was actually on staff, one of Nicole's predecessors. I think John was probably the operative lawyer in raising the question about the constitutionality of the 1973 Act, and I don't think there's any question that it's unconstitutional. After March 7, 1973 it was clearly inappropriate for the General Assembly to create special purpose districts. They did it anyway, but for all practical purposes, the County, after 1978, did not operate that way. And, because of the – I think the confusing language in Mr. Umphlett's 1975 resolution, that resolution was repealed by County Council. Mr. Flynn was the Supervisor then on July 27, 1981. So, the operative document establishing the Berkeley County Water and Sewer Authority, now Berkeley County Water and Sanitation, as a division, a department of the County,

was Mr. Umphlett's ordinance dated December 28, 1978, and we have been, we collectively, County Council, your staff, have been operating under that ordinance for the, what is that, the last 33 years. So, that's..."

Mr. Callanan: "Mr. Chairman?"

Mr. Jennings: "...roughing 30 – yes, Sir?"

Chairman Schurlknight: "Councilman Callanan."

Mr. Callanan: "The revenues collected from the customers – is that considered a user fee?"

Mr. Jennings: "Yes."

Mr. Callanan: "So, I mean – and this was presented to me or it might have been e-mailed to several people here – are there restrictions as to what user fees can be used for under state law?"

Mr. Jennings: "Mr. Callanan, I've..."

Mr. Callanan: "Well, what I'm getting at..."

Mr. Jennings: "...I've never been asked that question..."

Mr. Callanan: "I mean..."

Mr. Jennings: "...I'm certain we can find out..."

Mr. Callanan: "I mean, because the question I had is – can – if it's a user fee, it's a fee for a particular service, could then the revenue be, that's generated from that be used for something completely unrelated to the service, providing the service?"

Mr. Jennings: "As I say, I've never been asked that question."

Mr. Callanan: "Ok; I just..."

Mr. Jennings: "I'll be glad to go back..."

Mr. Callanan: "Because that was one of the issues that came up to me that someone asked me about, and that was the issue about, you know, that comes to the issue about the funds..."

Mr. Jennings: "Ok."

Mr. Callanan: "...which is can funds that were collected as user fees then be used for other purposes in County government, and that was, you know, kind of the shady area, which I'm just, you know, that I'm concerned about, that I would like to learn more."

Mr. Jennings: "And, I'm sorry. The charge I had for tonight was to give ya'll some background on how we came to where we are, if it's..."

Mr. Callanan: "Sure; ok."

Mr. Jennings: "Supervisor and Council's desire, I'll be glad to go back and look at that, but we try not to head down avenues without being asked to."

Mr. Callanan: "Sure."

Committee Member Call: "Mr. Chairman?"

Chairman Schurlknight: "Is that all, Mr. Callanan?"

Committee Member Call: "Mr. Chairman; I'm sorry."

Chairman Schurlknight: "Yes."

Committee Member Call: "Is he through?"

Chairman Schurlknight: "Yes."

Committee Member Call: "Oh, ok; it seems like we probably have several other departments in the County Government that collect user fees for various services that we don't segregate out strictly for those departments. The first thing, the first one comes to mind may be, you know, building permits, something like that. Would that be comparable to the user fee from the, let's say, the Water and Sewer Authority or the Water and Sewer, Berkeley County Water and Sewer, non-authority?"

Mr. Jennings: "I'll be glad to bring Ms. Ewing up with me, but I think both of our answers would likely be, we'll be glad to go back and look at that issue. It's not one that I say, in 35 years..."

Committee Member Call: "Well, I think I know the answer to the question. I don't think that all the building permit fees we collect necessarily go back into the Building Permit Department. That's where I'm coming from with that. I had, seems like I had another question. Maybe, I'll remember it – something about what you said when you started, but I didn't want to interrupt you, but I'm through for now. Go ahead, Mr. Chairman."

Chairman Schurlknight: "Thank you. Any other discussion?"

Chairman Schurlknight: “Ok; that issue, David, I appreciate that, and we will – I’ll be getting with Nicole, and then we’ll be looking at getting that answer for Council. But, David, the jest of it is that Berkeley County Water and Sanitation is, basically, just another department of Berkeley County?”

Mr. Jennings: “Yes, Sir.”

Chairman Schurlknight: “Is that what we’re saying? It’s not a separate entity or authority sitting out there? It’s just a department of the County.”

Committee Member Call: “Mr. Chairman; Mr. Chairman?”

Chairman Schurlknight: “Yes.”

Committee Member Call: “I did want to – I remember the comment I wanted to make to David is that what the Legislature did 40 years ago, you said was unconstitutional, but we all, I think, we all understand that what they do is considered constitutional until proven otherwise. So, where do we stand with that clause in our state constitution?”

Mr. Jennings: “Since the County has never operated under that legislation since 1978, there might well be an organization in the ether known as the Berkeley County Water and Sewer Authority, because, as you say, the act has never been declared unconstitutional, but it has, since December of 1978, not been operative. All of the actions in the water and sewer area, at the very least since December 28, 1978, have been taken on behalf of and in the name of the Berkeley County Government. So, I think, from a realistic standpoint, whether or not that statute was declared unconstitutional is irrelevant.”

Committee Member Call: “Another question along that line. You mentioned that it was operated as a – by an authority, however, it was appointed. Was that authority setting rates and fees?”

Mr. Jennings: “If that authority had continued in existence, it would – it was set up along the lines of, say for instance, the North Charleston Sewer District, which I represent...”

Committee Member Call: “Where I’m going with this question, Mr. Jennings, they were not elected, correct?”

Mr. Jennings: “Correct.”

Committee Member Call: “Ok; so, go ahead and finish your answer.”

Mr. Jennings: "So, if they had operated as an authority, yes, they could have set rates. The North Charleston Sewer District Commission sets rates, sets sewer rates for the customers which it serves. Those members are appointed, but as I say, the most recent point in time that you can make an argument that there was an operating entity known as the Berkeley County Water and Sewer Authority a special purpose district was December 28, 1978, but Mr. Umphlett put it into it on that date."

Committee Member Call: "Thank you."

Committee Member Steve Davis: "Mr. Chairman, Bob you were talking about it. In the court system, we pay a fee, you know, to have access to the court system. I don't think those fees are restricted, can't be used for other County purposes."

Mr. Jennings: "I would defer to Nicole on that. I don't know."

Chairman Schurlknight: "And, we'll get the answer for the fee..."

Committee Member Steve Davis: "Thank you."

Chairman Schurlknight: "...by next Committee Meeting next month. Is there any other questions?"

Committee Member Call: "Well, one more – one comment I would like to just make a comment to David, and he don't have to give me an answer. Could the Berkeley County Water and Sewer be considered a business that the County operates that operates at a profit? It can use those profits as it sees fit?"

Mr. Jennings: "We'll put that under the same umbrella."

[Laughter]

Mr. Jennings: "I don't think the County has businesses. I think the County's business is government, and it conducts business in a myriad of areas, and water, sewer and solid waste are three of those areas."

Committee Member Call: "But if it produces a profit, you don't throw the profit away."

Mr. Jennings: "Governments don't produce profit. Governments have revenues and expenses and, contrary to the government in Washington, prepares a budget that is balanced. Expenditures to revenues, and as I understand the budgetary process, if you end up a year where revenues have exceeded expenses, you carry those over to the next year and incorporate that into your calculations for the following fiscal year. And, I would defer to Kace or Johnette, but I don't think profit..."

Committee Member Call: "Theoretically..."

Mr. Jennings: "...is a term used in governmental accounting."

Committee Member Call: "Well, let's don't use it that way. Let's just say, theoretically, there is an excess of revenues in the water and sanitation, and that would be dumped into, say, the General Fund, for a general tax decrease."

Mr. Jennings: "No, Sir; I don't believe that occurs."

Committee Member Call: "Thank you."

Chairman Schurlknight: "Thank you. Any other questions for Mr. Jennings?"

Committee Member Steve Davis: "Mr. Jennings, I think you would concur that the identity of the entity really dictates, in a large degree, I mean, if there was a special tax district for a specific use, then I concur with that argument, that the fund cannot be utilized for other purposes. But, if we adopt a process or thinking that it's an agency of the County, then the County can utilize its agency for the benefit of the whole principle."

Mr. Jennings: "Mr. Davis, I – I don't know."

Committee Member Steve Davis: "Their not gonna pay me for that legal advice, but thank you."

[Laughter]

Mr. Jennings: "If the Supervisor directs Mr. Martin, who directs me, we'll – we will get into that, but I hesitate to speculate on an issue that we haven't looked at."

Chairman Schurlknight: "Well, David, the shorter version, you're not gonna speculate no matter how much we drill you, you're not gonna speculate on that issue."

Mr. Jennings: "I'm gonna try not to."

Chairman Schurlknight: "I can respect that; believe me, I can respect that."

[Laughter]

Committee Member Steve Davis: "Well, you know, you get billable hours. You gotta go find the answer. That makes sense, ok?"

[Laughter]

Chairman Schurlknight: "That's exactly right. The hour's getting late. Do you have any other questions of David?"

Committee Member Pinckney: "I would just like to make a comment in regards to fees. You know, when you look at the fire fees, special district set aside for a particular thing, unlike water and sanitation. I would just like to make that comment. Thank you."

Chairman Schurlknight: "Any other discussion? Hearing none..."

Committee Member Steve Davis: "I move for adjournment."

Chairman Schurlknight: "Well, first thing, let me thank Mr. Jennings. David, thank you very much for coming out tonight with us, and we'll get with you about next month."

Mr. Jennings: "You're very welcome."

Chairman Schurlknight: "Thank you very much on that. Ok; I'll entertain that motion."

It was moved by Committee Member Steve Davis and seconded by Committee Member Pinckney to **adjourn** the meeting of the Committee on Finance. The motion passed by unanimous voice vote of the Committee.

Meeting adjourned at 8:13 p.m.

August 22, 2011
Date Approved